

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,  
and the STATE OF DELAWARE,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND COMPANY

and

CIBA SPECIALTY CHEMICALS  
CORPORATION

Defendants.

CIV. NO. \_\_\_\_\_

CONSENT DECREE

**I. INTRODUCTION**

1. This Consent Decree is made and entered into by and among the United States of America (United States), on behalf of the Under Secretary for Oceans and Atmosphere of the National Oceanic and Atmospheric Administration (NOAA) acting on behalf of the Secretary of Commerce, the Secretary of the Department of the Interior (DOI) acting through the U.S. Fish and Wildlife Service (FWS), and the State of Delaware (State) through the Delaware Department of Natural Resources and Environmental Control (DNREC) (collectively, "the Trustees"); and E.I. du Pont de Nemours and Company and Ciba Specialty Chemicals Corporation (collectively, "DuPont").

2. The United States and the State have filed a complaint against DuPont seeking damages for injuries to natural resources, arising out of the releases of hazardous substances at manufacturing facilities, and adjacent waste disposal areas which received waste from the manufacturing facilities (hereinafter, "Plant Site"), owned, or formerly owned by E.I. du Pont de Nemours, and a portion of which is currently owned by Ciba Specialty Chemicals Corporation ("Ciba").

3. The Trustees have assessed injuries to natural resources resulting from Plant Site releases, focusing their investigation on an Assessment Area described below. The purpose of this Consent Decree is to fully and finally resolve Natural Resource Damage claims under section 107(a)(4)(c) and 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9607 (a)(4)(c) and 9607(f) (hereinafter referred to as "CERCLA") and the Delaware Hazardous Substance Cleanup Act (hereinafter referred to as "HSCA"), 7 Del. C. Ch. 91 with respect to the Assessment Area.

## **II. BACKGROUND**

4. The approximately 120 acre Assessment Area, located in New Castle Co., Delaware is adjacent to and contains a portion of the Christina River, a sub-watershed in the Delaware River Estuary. The Assessment Area is located near the I-95, I-495, and Delaware State 141 interchange and consists of a pigment manufacturing plant, a former chromium dioxide production facility (DuPont Holly Run Plant), two inactive landfills separated by the Christina River, a small recreational area (Ballpark), a segment of the Christina River and associated wetlands. Hazardous substances found at the Assessment Area include arsenic, barium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, silver, and zinc, all of which are

"hazardous substances" within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The Assessment Area is the subject of the Damage Assessment and Restoration Plan (DARP) incorporated in this Consent Decree as Attachment A, and is depicted in the map attached to the Consent Decree as Attachment B.

5. E. I. Du Pont de Nemours purchased and operated an existing pigment manufacturing facility in 1929, and operated it until 1984 when it was acquired by Ciba. As part of the acquisition agreement, E. I. du Pont de Nemours agreed to indemnify Ciba for certain claims, including the claims in the Complaint. E. I. du Pont de Nemours continues to own the remainder of the Plant Site, and manufactured chromium dioxide powder at the Plant Site from 1978 until 1999.

6. In 1988, E. I. du Pont de Nemours entered into an Administrative Order on Consent (AOC) with the Environmental Protection Agency (EPA) to complete investigations for the Dupont Newport Superfund Site ("Superfund Site") in which the Assessment Area and Plant Site are located. The Superfund Site was included on the National Priorities List in early 1990. A Remedial Investigation/Feasibility Study (RI/FS) for the Superfund Site was conducted in three phases between August 1988 and 1992. In August 1993, a Record of Decision (ROD) was issued that specified remedial actions for seven operable units within the Superfund Site. A summary of the remedial actions undertaken pursuant to the ROD is included in the DARP.

7. Liability for damages to natural resources, pursuant to Section 107 of CERCLA, 42 U.S.C. §9607 shall be to the United States and the State for natural resources belonging to, managed by, controlled by, or appertaining to them. Liability for natural resources shall also be to the State pursuant to HSCA, 7 Del. C. Ch. 91. The United States and the State are authorized

to assess injuries to federal and state natural resources caused by releases of hazardous substances and to recover damages to: (1) restore, rehabilitate, replace or acquire the equivalent of the injured natural resources and (2) reimburse the Trustees for the reasonable costs of the damage assessment and restoration planning. All natural resource damage costs required to be paid under this Consent Decree are set forth in the "Summary of Costs" which is Attachment G to this Consent Decree.

8. The United States and the State share trusteeship of the injured resources in the Assessment Area. The Trustees determined that releases of hazardous substances to the wetlands, surface water, groundwater, sediments, and terrestrial habitats within the Assessment Area have resulted in injury to these natural resources, and that some of these injuries have continued post-remediation.

9. Pursuant to this Consent Decree, DuPont will (1) pay the costs for the Trustees to implement the projects in the DARP (Attachment A) to restore Assessment Area natural resources or their services; (2) purchase an Environmental Covenant from the landowner of private property outside the Assessment Area on which the restoration projects will be implemented (hereinafter "Pike Property"); (3) pay Damage Assessment Costs incurred by the Trustees; and (4) pay a damage claim to the State, and receive a credit from the State for prior work performed to extend access to a public water supply, as compensation for any remaining injuries to groundwater in the Assessment Area.

10. The Parties agree that the DARP and this Consent Decree represent a cooperative and collaborative process.

11. The Parties recognize, and the Court by entering this Consent Decree finds that this Consent Decree has been negotiated in good faith, that implementation of this Consent Decree will expedite the restoration of natural resources and will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

### **III. JURISDICTION AND VENUE**

12. The Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b) and HSCA, 7 Del. C. § 9105. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

### **IV. PARTIES.**

13. The parties to this Consent Decree are the United States of America, on behalf of NOAA and DOI/FWS; the State of Delaware, on behalf of DNREC; and E. I. du Pont de Nemours and Company and Ciba Specialty Chemicals Corporation.

### **V. DEFINITIONS**

14. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, 42 U.S.C. § 9601 et seq., or in regulations promulgated under CERCLA, 43 C.F.R. Part 11 and 40 C.F.R. Part 300, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree

or in the Attachments attached hereto and incorporated hereunder, the following definitions shall apply:

A. "Assessment Area" shall mean the area described in paragraph 4 above, depicted on the map attached to this Consent Decree as Attachment B, which is the subject of the restoration measures described in the DARF.

B. "Consent Decree" means this document entitled "Consent Decree," all attachments thereto, and any modifications made pursuant to Section XVII.

C. "Date of Entry" means the date on which this Consent Decree is entered by the Clerk of Court after the United States and the State have moved for entry and the District Court Judge has signed the Consent Decree.

D. "Date of Lodging" means the date that this Consent Decree is lodged with the Clerk of Court.

E. "Interest" shall mean interest accruing from the effective date of the Consent Decree, until the date of payment, at the rate set forth in 28 U.S.C. 1961. Interest shall be simple interest calculated on a daily basis;

F. "Parties" means the United States, the State, and DuPont.

G. "Damage Assessment Costs" means the costs incurred by the Trustees in assessing the natural resources actually or potentially injured, destroyed, or lost in the Assessment Area, and in identifying and planning for restoration actions to compensate for such injuries and losses. Such costs include administrative costs and other costs or expenses, direct and indirect, including but not limited to, the Trustee attorneys' costs incurred to support the assessment and restoration planning process.

H. "DARP" means the plan entitled "Damage Assessment and Restoration Plan, DuPont/Newport Assessment Area (and incorporated in this Consent Decree as Attachment A).

I. "Restoration Projects" shall mean the restoration actions comprised of, defined and described in the DARP (Attachment A).

J. "Superfund Site" shall mean the E.I /Newport Superfund Site which is the subject of the August 1993 ROD issued by EPA.

K. "Trustees" means for the United States - NOAA, DOI/FWS; and, for the State - DNREC.

L. "Natural Resource Damages" shall mean damages recoverable under section 107(a)(4)(c) and 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9607 (a)(4)(c) and 9607(f) (hereinafter referred to as "CERCLA") and the Delaware Hazardous Substance Cleanup Act (hereinafter referred to as "HSCA)", 7 Del. C. Ch. 91, by the United States and the State on behalf of the public for injury to, destruction of or loss of Assessment Area natural resources and the services they provide.

## **VI. APPLICABILITY OF CONSENT DECREE**

15. The provisions of this Consent Decree shall apply to and be binding on the United States, the State and DuPont, their respective directors, employees, agents, predecessors, subsidiaries, affiliates, parents, successors, and assigns. No change in ownership, corporate or partnership status relating to DuPont including, but not limited to, any transfer of assets or real or personal property, shall in any way alter the responsibilities of DuPont under this Consent Decree.

## **VII. DAMAGE ASSESSMENT COSTS**

16. Not later than 120 days after the Effective Date of this Consent Decree, DuPont shall reimburse each Trustee for its Damage Assessment Costs in the amounts specified below.

17. DuPont shall pay \$98,898.00 for Damage Assessment Costs incurred by DOI. The DOI Past Costs shall be paid by Electronic Funds Transfer (EFT) to the U.S. Department of Justice lockbox, referencing DOJ No. 90-11-2-883/2 and the United States Attorney's Office file number, in accordance with the EFT instructions that shall be provided by the United States Attorney's office after lodging of this Decree. Any EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time) will be credited on the next business day. Defendants shall simultaneously deliver copies of the EFT transmittal notice to the Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Washington D.C. 20044, Attn: DOJ No. 90-11-2-883/2. Notice of the EFT shall be sent to the Parties as specified in Section IX, as well as to:

U.S. Department of the Interior  
Natural Resource Damage Assessment and Restoration Program  
Attention: Restoration Fund Manager  
1849 C Street, NW  
Mail Stop 4449  
Washington, DC 20240

18. DuPont shall pay \$173,127.30 for Damage Assessment Costs incurred by NOAA. The NOAA Past Costs shall be paid by EFT to the U.S. Department of Justice lockbox, referencing DOJ No. 90-11-2-883/2 and the United States Attorney's Office file number, in accordance with the EFT instructions that shall be provided by the United States Attorney's office after lodging of this Decree. Any EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time) will be credited on the next business day. Defendants

shall simultaneously deliver copies of the EFT transmittal notice to the Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Washington D.C. 20044, Attn: DOJ No. 90-11-2-883/2. Notice of the EFT shall be sent to the Parties as specified in Section IX, as well as to:

NOAA/NOS/OR&R  
ATTN: Kathy Salter, DARRF Manager  
1305 East West Highway  
SSMC4, Room 9331  
Silver Spring, MD 20910-3281, and

Sherry Krest  
United States Department of the Interior  
USFWS, CBFO  
177 Admiral Cochrane Dr.  
Annapolis, MD 21401

19. DuPont shall pay \$24,527.21 for Damage Assessment Costs incurred by the State. DuPont shall also pay the State \$8,000.00 towards the State's claim for injury to groundwater in the Assessment Area, and the State hereby grants DuPont a credit, in the amount of \$566,000.000 for work previously performed by DuPont to extend access to a public water supply, as compensation for any remaining injury to groundwater in the Assessment Area. Both amounts required to be paid under this paragraph may, at DuPont's discretion, be paid to DNREC in the form of one check for the combined amount. Checks for payments required by this paragraph should be made payable to DNREC HSCA account, and referenced as "DuPont Newport Site" and mailed to:

Attn: Jane Biggs  
DNREC - SIRB  
391 Lukens Dr.  
New Castle, DE 19720

Notice of payment should be sent to:

Robert Kuehl  
Deputy Attorney General  
DNREC - SIRB  
391 Lukens Dr.  
New Castle, DE 19720

20. In the event that payments required by this Section are not made within 120 days of the entry of this Consent Decree by the Court, interest, at the interest rate specified in Paragraph 14 E , on the unpaid balance shall be paid commencing on the 121<sup>st</sup> day after entry of this Consent Decree and accruing through the date of payment. Payments of interest shall be in addition to such other remedies or sanctions available to the Trustees by virtue of DuPont's failure to make timely payments under this Section. DuPont shall make all payments of interest required by this Paragraph in the manner described in this Section.

#### **VIII. NATURAL RESOURCE RESTORATION CREDITS AND REQUIREMENTS**

21. The Parties agree that the release of hazardous substances resulted in injury to natural resources in riverine, riparian, wetland ecosystems and groundwater within the Assessment Area. Under the terms of the ROD, DuPont was required to install a new water supply line along a portion of Old Airport Road and provide water hook-ups to surrounding businesses and residences. DuPont volunteered to go beyond what the ROD required and extend the water supply line and hook ups to the end of Old Airport Road, at an additional cost of \$566,000.00. As compensation for its claim for injury to groundwater, the State has granted DuPont Natural Resource Damage credit in the amount of \$566,000.00 for improving access to a public water supply. Additionally, DuPont, in consultation with EPA, DNREC, NOAA and USFWS, performed the following measures during remediation to restore injured natural

resources associated with the North and South Wetlands in the Assessment Area: Stabilization of the river berm; shoreline erosion protection; sediment excavation to a depth of more than twice of what was required by the ROD; construction of a water control structure; sediment stabilization with erosion matting; and Phragmites control. These measures had the effect of improving drainageway habitat, increasing the amount of open water at high tide, improving water quality, and providing better forage and cover for fish and wildlife in the North and South Wetlands. The Trustees have determined that the restoration measures taken by Dupont improved the North and South Wetlands beyond their baseline condition. The Trustees have quantified these restoration measures in the DARP, and have credited DuPont accordingly for restoring injured natural resources in the Assessment Area.

22. In order to fully compensate the public for the lost use of Assessment Area natural resources between the time of the release and the time the Assessment Area resources were restored, DuPont has agreed to purchase an Environmental Covenant on the Pike Property and to fund certain restoration measures to be performed by the Trustees on the Pike Property as set forth in the DARP. The 56 acre Pike Property, located on the Kent and Sussex county line approximately 55 miles down Delaware Bay from the Christina River, includes upland and emergent tidal wetlands. Restoration of the Pike Property is expected to result in significant habitat improvements in the Mispillion River ecosystem. Natural resources such as blue crab, Atlantic herring, spot, and striped bass, use the entire Delaware estuary and its rivers (e.g., the Christina and Mispillion Rivers) as spawning and nursery areas. Therefore, the Trustees determined that the Delaware Estuary represented the relevant watershed for siting additional restoration actions that will fully compensate the public for the lost use of Natural Resources in

the Assessment Area. The habitat on the Pike Property closely resembles that of the Assessment Area. Therefore, selection of the Pike Property for restoration opportunities outside the Christina sub-watershed of the Delaware Estuary was determined by the Trustees to be appropriate.

23. Restoration Costs. Not later than 30 days after the Effective date of this Consent Decree, DuPont agrees to pay \$742,653.00 to the Trustees to be used by the Trustees to implement Restoration Projects in the Environmental Covenant area (Pike Property), as set forth in the DARP (Attachment A). This payment is expected to cover costs associated with the Restoration Projects, including costs for FWS to develop design documentation and performance measures to implement the DARP, as well as other costs including, but not limited to, Trustee oversight and monitoring, administration, and costs outside the DARP as described in paragraph 24 below. These funds shall be placed in an account in the Department of Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Fund, and used in accordance with the "Agreement Among Trustees" (Attachment C). The NRDAR account will be known as the "DuPont Newport Account". Payment shall be made as follows:

U.S. Department of Interior  
Natural Resource Damage Assessment and Restoration Program  
Attention: Restoration Funds Manager  
1849 C Street, NW  
Mail Stop 4449  
Washington D.C. 20240

24. Costs Outside the DARP. In the event that unanticipated conditions require actions outside the DARP to assure the success of the Restoration Projects, the FWS, as Lead Administrative Trustee, shall notify DuPont and provide documentation as to the need for the

proposed expenditure(s). DuPont shall be provided with an opportunity to comment or object within two weeks of receipt of such notice. If DuPont does not respond, FWS may assume DuPont has no objection and may use the funds for the activities described in the notice. If, however, FWS receives comments from Dupont, FWS will attempt to accommodate those comments when appropriate. Notwithstanding the notice requirement described herein, the Trustees will make the final decision as to whether to proceed with activities described in the notice.

25. Certification of Completion and Accounting. During the period of restoration construction as described in the DARP, DOI shall provide DuPont with a written accounting of monies spent from the NRDAR Fund DuPont Newport Account at least every sixty days. Within 90 days after the Trustees certify that restoration is complete, the Trustees shall provide notice to DuPont of such completion and a final written accounting of monies spent from the DuPont Newport Account. Any unspent monies from this account, including interest accumulated, shall be reimbursed to DuPont within 180 days of the notification of the certification that the restoration is complete.

26. Monitoring Plan. DuPont shall implement the Monitoring Plan (Attachment D) including all corrective actions, per Trustee oversight. The Parties may agree to modifications in the Monitoring Plan. All agreed upon modifications must be made in writing.

27. Environmental Covenant. In order to ensure that the restored natural resources and the services they provide are preserved in perpetuity, DuPont has entered into an agreement with William and Sharon Pike of 661 Shawnee Road, Milford Delaware 19963 to execute an Environmental Covenant. The Environmental Covenant for the Pike Property has been executed

and recorded in the deeds records of Sussex and Kent Counties, Delaware, and is Attachment E to this consent Decree. Within 60 days of the days after receipt of notice of certification that restoration is complete, DuPont shall pay the sum of \$50,000 to the Delaware Department of Fish and Wildlife for monitoring and maintenance of the Environmental Covenant on the Pike Property. Payment shall be made as described in paragraph 19, except that the check shall be referenced "DuPont Environmental Covenant."

### IX. NOTICE

28. Whenever notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses specified below, unless otherwise specifically provided for in this Consent Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. All notices shall be sent by first-class mail.

For DOJ: Chief, Environmental and Enforcement Section  
Environment and Natural Resource Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
DJ # 90-5-1-1-07673

For NOAA: Sharon Shutler, Esq.  
NOAA Office of General Counsel  
1315 East-West Highway, Room 15132  
Silver Spring, MD 20910

For DOI: Mark Barash, Esq.  
Office of the Solicitor  
U.S. Department of the Interior  
Suite 612  
1 Gateway Center  
Newton Corner, MA 02458

For DNREC: Jane Biggs  
DNREC - SIRB

391 Lukens Dr.  
New Castle, DE 19720

For Du Pont: Ralph G. Stahl, Jr., Ph.D., D.A.B.T.  
Principal Consultant  
DuPont Corporate Remediation Group  
Barley Mill Plaza, Bldg. 19  
Route 141 & Lancaster Pike  
Wilmington, Delaware 19805

#### **X. DISPUTE RESOLUTION**

29. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of DuPont that have not been disputed in accordance with this Section.

30. Informal Dispute Resolution. If, in the opinion of either the Trustees or DuPont, there is a dispute which arises under or with respect to this Consent Decree, that Party shall send written notice to the other Party or Parties outlining the nature of the dispute and requesting negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations. The period for informal negotiations shall not exceed 30 days from the date the notice is sent, unless this time period is modified by written agreement of the Parties. At any time during informal negotiations, the Parties may agree to take their dispute before a mutually agreed upon mediator. The outcome of the mediation, however, shall be non-binding.

31. Formal Dispute Resolution.

A. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, DuPont invokes the formal dispute resolution procedures of this Section. DuPont shall invoke formal dispute resolution by serving the Trustees with a written Statement of Position on the matter in dispute including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by DuPont.

B. Within 60 days after receipt of Du Pont's Statement of Position, the Trustees will serve on DuPont their Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees. Within 15 days after receipt of this Statement of Position, DuPont may submit a Reply.

C. An administrative record of the dispute shall be maintained by the Trustees and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustees may allow submission of supplemental statements of position by the Parties to the dispute.

D. The Trustees will issue a final decision resolving the dispute based on the administrative record described in Paragraph 31 C, above. This decision shall be binding on DuPont, subject only to the right to seek judicial review pursuant to Paragraph 31 E.

E. Any decision made by the Trustees pursuant to Paragraph 31 D, above, shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by

with the Court and served on all Parties within 10 days of receipt of the Trustees' decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The Trustees may file a response to DuPont's motion.

F. In any judicial proceedings on any dispute governed by this Consent Decree, DuPont shall have the burden of demonstrating that the decision of the Trustees is not in accordance with the requirements of the Consent Decree, according to a standard of review based on applicable law. Judicial review of the decision of the Trustees shall be on the administrative record.

32. The invocation of informal or formal dispute resolution procedures pursuant to this Section shall not extend, postpone or affect in any way any obligation of DuPont under this Consent Decree that is not directly in dispute, unless the Trustees agree or the Court rules otherwise.

#### **XI. COVENANTS NOT TO SUE BY THE UNITED STATES AND THE STATE**

33. In consideration of the satisfactory performance by DuPont of all of the obligations under this Consent Decree, and except as specifically provided in Section XII, the United States and the State each hereby covenant not to sue or to take administrative action against DuPont for Natural Resource Damages at the Assessment Area. This covenant is effective upon fulfillment by DuPont of all the obligations contained in this Consent Decree.

**XII. RESERVATION OF RIGHTS BY THE UNITED STATES  
AND THE STATE**

34. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve the right to institute civil or administrative proceedings, as applicable, against DuPont in this action or in a new action, seeking recovery of additional Natural Resource Damages, if:

- (i) new conditions, including the release of hazardous substances at or from the Plant Site that were previously unknown to the Trustees, are discovered; or
- (ii) new information about the release of hazardous substances from the Plant Site that previously was unknown to the Trustees, in whole or in part, is received, and these previously unknown conditions or this information, together with any other relevant information, indicates that there are new or additional injuries to, destruction of, or losses of natural resources or new or additional natural resource service losses that were unknown to the Trustees when they issued the DARP.

35. Information and conditions known to the Trustees shall include only the information and conditions set forth in Attachment F.

36. Nothing in the Consent Decree is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action, administrative or judicial for the following:

- A. DuPont's failure to meet its obligations contained in this Consent Decree;
- B. Claims brought on behalf of the U.S. or Delaware, other than for Natural Resource Damages that are the subject of this Consent Decree;

C. Liability arising from any past, present, or future releases of hazardous substances resulting in injuries to natural resources outside the Assessment Area;

D. Liability arising from any releases of hazardous substances from any site or location that is not the subject of this Consent Decree, including, but not limited to, any hazardous substance taken from the Assessment Area and disposed of at another site or location;

E. Liability for violations of Federal or State law which occur during or are incident to the implementation and/or monitoring of the Restoration Projects;

F. Any and all criminal liability; and

G. Any matter not expressly included in the covenant not to sue for Natural Resource Damages set forth in Section XI.

### **XIII. COVENANTS BY DUPONT**

37. DuPont hereby covenants not to sue and agrees not to assert any claims or causes of action against the U.S. and State of Delaware for any claims arising from or relating to the Restoration Projects or any claims arising from or relating to Natural Resource Damages, pursuant to any Federal, State, or common law, including, but not limited to the following:

A. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of State or Federal law; or

B. any claims arising out of activities related to the Restoration Projects, including without limitation, claims based on the Trustees' selection of the Restoration Projects, oversight of the Restoration Projects, and/or approval of plans for such activities.

38. DuPont hereby covenants not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or the State provide written notice that one or both of them no longer supports entry of the Consent Decree.

39. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights of DuPont with respect to all matters other than those expressly specified in the covenants set forth in this Section.

#### **XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

40. Nothing in this Consent Decree shall be construed to create any right in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each party may have with respect to this release of hazardous substances against any person not a Party hereto.

41. In any subsequent administrative or judicial proceeding initiated by the United States or Delaware pursuant to Section XII, DuPont shall not assert, and may not maintain any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, statute of limitations, or any other defenses based upon the contention that the claims raised by the Trustees in the subsequent proceeding were or should have been brought in the instant case, provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section XI. In the event the United States or Delaware initiates a subsequent administrative or judicial proceeding pursuant to Section XII, DuPont expressly reserves all other potential defenses to such administrative or judicial proceeding.

42. The Parties agree, and by entering into this Consent Decree this Court finds, that as of the date of this Consent Decree DuPont is entitled, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and HSCA, 7 Del. C. §9107(c) for Natural Resource Damages at this Site.

#### **XV. CERTIFICATION**

43. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

#### **XVI. VOIDABILITY**

44. If for any reason the District Court should decline to approve entry of this Consent Decree in the form presented, or if the United States or the State withdraws its consent pursuant to Section XX, this Consent Decree and the settlement embodied herein shall be voidable by written notice to the other Parties at the sole discretion of any Party to this Consent Decree, and the terms hereof may not be used as evidence in any litigation.

#### **XVII. MODIFICATION**

45. Any material modification to the DARP (Attachment A) may be made by written agreement between the Trustees and DuPont, or in accordance with the dispute resolution process, as provided in Section X.

46. Any modification that materially alters a requirement of this Consent Decree, other than requirements of the DARP, must be approved by the Court.

### **XVIII. COMPLIANCE WITH OTHER LAWS**

47. This Consent Decree shall not be construed in any way to relieve DuPont or any other person or entity from the obligation to comply with any Federal, State, or local law.

### **XX. RETENTION OF JURISDICTION**

48. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

### **XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

49. The Parties agree and acknowledge that final approval by the United States and the State and entry of this Consent Decree (including Attachments) is subject to a thirty-day (30) period for public notice and comment in accordance with U.S. Department of Justice policy. The United States and the State reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. DuPont consents to the entry of this Consent Decree without further notice.

### **XXII. TERMINATION**

50. Any Party may apply to the Court to terminate this Consent Decree after:

(A) All costs have been paid as provided in Sections VII and VIII;

(B) All restoration and monitoring actions are completed as provided for in Section VIII;  
and

(C) All requirements related to the Environmental Covenant as set forth in Section VIII  
have been completed.

#### **XXIII. EFFECTIVE DATE**

51. This Consent Decree shall be effective upon the Date of Entry by the Court.

#### **XXIV. SIGNATORIES/SERVICE**

52. DuPont shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. DuPont hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable rules of this Court, including, but not limited to, service of a summons.

53. This Consent Decree may be executed in any number of counterparts and, as executed, shall constitute one agreement binding on all of the Parties hereto, even though all of the Parties do not sign the original or the same counterpart.

#### **XXIII. FINAL JUDGMENT**

54. This Consent Decree and its Attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The Attachments to this consent decree are as follows:

Attachment A - DARP

Attachment B - Map of Assessment Area

Attachment C - Agreement Among Trustees

Attachment D - Monitoring Plan

Attachment E - Environmental Covenant

Attachment F - Information and Conditions known to the Trustees

Attachment G - Summary of Costs

55. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and DuPont.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

FOR THE PLAINTIFF UNITED STATES:

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

DATE: 8/11/06

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

DATE: \_\_\_\_\_

\_\_\_\_\_  
RACHEL JACOBSON  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20530  
(202) 514-5474

Of Counsel

Sharon Shutler, NOAA  
Mark Barash, DOI

FOR PLAINTIFF UNITED STATES, continued

COLM F. CONNOLLY  
United States Attorney  
District of Delaware

DATE: \_\_\_\_\_

\_\_\_\_\_  
DOUGLAS E. McCANN  
Assistant United States Attorney  
Delaware Bar ID No. 3852  
1007 Orange Street, Suite 700  
P.O. Box 2046  
Wilmington, Delaware 19899-2046

FOR PLAINTIFF STATE OF DELAWARE:

Delaware Department of Natural Resources and  
Environmental Control

DATE: \_\_\_\_\_

\_\_\_\_\_  
JOHN A. HUGHES, Secretary  
Delaware Department of Natural Resources  
and Environmental Control  
89 Kings Highway  
Dover, Delaware 19901

As to form:

Delaware Department of Justice

DATE: \_\_\_\_\_

\_\_\_\_\_  
LAWRENCE W. LEWIS  
State Solicitor  
Delaware Department of Justice  
820 N. French Street  
Wilmington, Delaware 19801

DATE: \_\_\_\_\_

\_\_\_\_\_  
ROBERT S. KUEHL  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French Street  
Wilmington, Delaware 19801

FOR THE DEFENDANT E.I. DU PONT de NEMOURS  
and COMPANY:

DATE: \_\_\_\_\_

\_\_\_\_\_  
PAMELA MEITNER, Corporate Counsel  
Delaware State Bar ID #559  
E.I. du Pont de Nemours and Company  
1007 Market Street - D7099  
Wilmington, DE 19899

DATE: \_\_\_\_\_

\_\_\_\_\_  
A. DWIGHT BEDSOLE, Director  
Corporate Remediation Group

FOR DEFENDANT CIBA SPECIALTY CHEMICALS  
CORPORATION:

DATE: \_\_\_\_\_

\_\_\_\_\_  
DOUGLAS J. HEFFERIN  
Vice President, EHS  
540 White Plains Road  
Tarrytown, New York 10591

On behalf of Ciba Specialty Chemicals Corporation and  
Ciba-Geigy Corporation, the previous owner of the Ciba  
portion of the Site.

DATE: \_\_\_\_\_

\_\_\_\_\_  
F. MICHAEL PARKOWSKI  
Parkowski, Guerke & Swayze, P.A.  
116 W. Water Street  
P.O. Box 598  
Dover, DE 19903-0598